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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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11 AKIVA AVIKAIDA ISRAEL,

12 Plaintiff,

13 v.

14 S. GILES, et al.,

15 Defendants.
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No. 2:21-CV-1027-DAD-DMC-P

FINDINGS AND RECOMMENDATIONS

17 Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to
18 42 U.S.C. § 1983. Pending before the Court is Plaintiff's first amended complaint, ECF No. 16.

19 On July 25, 2023, the Court issued an order addressing the sufficiency of
20 Plaintiff's first amended complaint. See ECF No. 26. The Court concluded that the action could
21 proceed on the following cognizable claims:

22 Plaintiff's First Amendment claim against Defendant Gyles
23 based on interference with Plaintiff's legal mail in 2021.

24 Plaintiff's First Amendment claim against Defendant Szichak
based on retaliation in 2021.

25 Plaintiff's Eighth Amendment claim against Defendant Szichak
26 based on harassment in November 2020.

27 See id.

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1 Plaintiff was provided leave to amend as to those claims found defective. See id.
2 Plaintiff was cautioned that, if no second amended complaint was filed within the time allowed
3 therefor, the Court will issue an order directing service as to the cognizable claims as well as
4 findings and recommendations for dismissal of all other claims and defendants. See id.
5 Ultimately, the deadline for filing a second amended was extended to 30 days from the date of the
6 Court's April 3, 2024, order granting Plaintiff's third request for an extension of time. See ECF
7 No. 32. To date, Plaintiff has not filed a second amended complaint. The Court will, therefore,
8 now recommend dismissal of all claims and defendants except as listed above consistent with the
9 Court's July 25, 2023, order. By separate order, the Court has directed service of process on
10 Defendants Gyles and Szichak as to the cognizable claims listed above.

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Based on the foregoing, the undersigned recommends as follows:

1. This action proceed on Plaintiff's first amended complaint as to the following claims and defendants:

Plaintiff's First Amendment claim against Defendant Gyles based on interference with Plaintiff's legal mail in 2021.

Plaintiff's First Amendment claim against Defendant Szichak based on retaliation in 2021.

Plaintiff's Eighth Amendment claim against Defendant Szichak based on harassment in November 2020.

2. All other claims and defendants be dismissed with prejudice for failure to state a claim upon which relief can be granted.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days after being served with these findings and recommendations, any party may file written objections with the Court. Responses to objections shall be filed within 14 days after service of objections. Failure to file objections within the specified time may waive the right to appeal. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: May 16, 2024



DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE